IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1172 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAND KISHOR VERMA - Petitioner(s)

Versus

MANEKLAL HARILAL MILLS LTD. NO. 2 - Respondent(s)

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Appearance :
MR LN MEDIPALLY for Petitioner(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner workman has challenged the legality of an Order dated 12.09.2002

passed by the Industrial Court in Appeal (IC) No. 32/02. By the impugned Order, the appeal of the respondent employer was allowed. Order passed by the Labour Court on 08.03.2002 was set aside.

2. The petitioner was working in the respondent mill company. He was dismissed from service by an Order dated 05.11.1993. In the order of dismissal, it was stated that on 1.11.1993 suddenly, the mill workers had gone on strike, which strike continued on 2.11.1993 also, but, some of the workers of the spinning department started joining working at 3.00 PM. General Manager Shri Nalin Shah was taking rounds at which time, the workman and his accomplices came in the spinning department and started threatening and abusing the workers and tried to prevent them from working. Shri Nalin Shah reached the spot and explained to them that they are workers of winding department and why have they come in the spinning department, they should go back to their section. The petitioner therefore got excited, caught hold of the scuff of Nalinbhai Shah and assaulted him, tore his shirt and underwear. In the scuffle, he also took away the wristwatch and broke the gold chain of Nalinbhai. It was stated that by his behaviour of criminal assault, he has committed grave

misconduct. Upon preliminary investigation, the management found that he has committed offence, however, under the prevailing atmosphere in the mill company, it is not possible to conduct an inquiry, he is therefore dismissed from service. It was also stated that the management reserves its right to prove the misconduct before the Court by leading evidence.

3. Petitioner challenged his dismissal before the Labour Court by filing an application. His application was allowed by the Labour Court by Order dated 08.03.2002. Respondent challenged the order passed by the Labour Court by filing an appeal before the Industrial Court. Industrial Court allowed the appeal and set aside the Order passed by the Labour Court.

4. Before the Labour Court, Shri Nalin Shah was examined as a witness. In his examination in chief, he stated that on the date of the incident, the petitioner instead of going to his section, was preventing other workers from working. Upon being told to go to his department, petitioner got angry and assaulted him in which his shirt got torn, his gold chain was broken and his wristwatch was stolen. It was stated that inquiry could not be conducted on account of the prevailing

condition in the company. He stated that there were other eye witnesses of the incident whose statements were recorded. Such statements were also produced before the Court. In the cross-examination, detailed questions were asked about non-conducting of departmental inquiry before passing the order of dismissal. Witness admitted that no departmental inquiry was conducted. However significantly, no questions were asked to this witness about the incident, which he narrated in his examination in chief except for asking that the petitioner was not involved in any offence.

4.1From the above, it can be seen that though no departmental inquiry was conducted against the petitioner before he was dismissed from service, the basis for passing the Order of dismissal was stated in the order of dismissal itself. Reason for not holding the inquiry was also indicated namely that the atmosphere in the mill company did not permit conducting of the inquiry. The employer clearly stated that it reserves the right to hold an inquiry before the Court.

4.2 When the eye-witness and the victim of the assault of the petitioner himself narrated before the Labour Court the incident, which was the basis for passing the order of dismissal against the petitioner, his evidence remained unchallenged and uncontroverted. The petitioner did not ask a single question in cross-examination to challenge the statements made by the witness. Thus, the version of the management that the petitioner had assaulted the General Manager of the mill company and had torn his shirt, broken his gold chain and his wristwatch was stolen remained uncontroverted and unchallenged. As noted earlier, though the petitioner asked detailed questions about non-conducting of an inquiry before passing the order of dismissal, no questions were asked to the witness on the assertion that he was assaulted by the petitioner on the eventful day. Thus, his testimony remained unchallenged. The charges against him were thus validly proved. Labour Court therefore erred in setting aside the order of dismissal. Industrial Court was justified in setting aside the order of the Labour Court. No case is made out for interference. Petition is therefore rejected. Rule made absolute. No orders as to costs.

(Akil Kureshi, J.)